

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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69cv07941 JEC-ACE

RIO CHAMA STREAM SYSTEM
Section 5: Rio Gallina

MOTION IN LIMINE

COMES NOW the Plaintiff, State of New Mexico, *ex rel.* State Engineer, and requests that in hearings in disputed subfiles CHGA-004-003 and CHGA-004-0004 the Court allow the introduction of the expert witness report of William W. Dunmire, for the limited purpose of showing the basis for Mr. Dunmire's opinions, and not for the truth of matters asserted in hearsay statements contained in his report.

As grounds therefore Plaintiff states as follows:

1. In connection with the litigation of remaining individual subfiles in Section 5 of the Rio Chama Stream System, Defendants Faye Davis (subfile CHGA-004-0003) and Abram Cordova (CHGA-004-0004) have disclosed and exchanged an expert witness report prepared by William W. Dunmire that contains a number of hearsay statements concerning irrigation and water use on the tracts owned by Ms. Davis and Mr. Cordova. The state objects to any use of these statements to prove the truth of the matters asserted in those statements. Hearsay statements contained in expert witness reports may be relevant to show the basis for an experts' opinion, but cannot be relied upon as proof of the matters asserted.

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Cf. Exxon Corp. and Affiliated Companies v. C.I.R., T.C. Memo 1992-92, 1992 WL 28059, 63 T.C.M. (CCH) 2067 (February 13, 1992); *see generally Dunkin' Donuts Inc. v. Patel*, 174 F.Supp.2d 202 (D.N.J. 2001).

WHEREFORE, the Plaintiff State of New Mexico requests that in hearings on disputed subfiles CHGA-004-0003 and CHGA-004-0004 the Court admit the expert witness report of William W. Dunmire into evidence for the limited purpose of showing the basis for Mr. Dunmire's opinions and not as proof of matters asserted in hearsay statements contained in his report.

Respectfully submitted,



EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion in Limine was mailed to the following persons on the 21 day of November, 2002.

Faye Davis
P.O. Box 170
Gallina, NM 87017

Abram Cordova
P.O. Box 91
Gallina, NM 87017

Special Master Vickie L. Gabin
USDC-DCNM
P.O. Box 2384
Santa Fe, NM 871504-2384

Darcy S. Bushnell, Esq.

Adjudication Staff Attorney
USDC-DCNM
333 Lomas Blvd. NW, Suite 270
Albuquerque, NM 87102-2272

Karla McCall, Data Manager
1315 Sagebrush Dr. SW
Los Lunas, NM 87031

Mary E. Humphrey, Esq.
P.O. Box 1574
El Prado, NM 87529